

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

KORRY BUSCH,)	
)	
Plaintiff,)	
)	
v.)	No. 4:23 CV 1668 CDP
)	
APPLECARE SERVICE COMPANY)	
INC,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

This matter comes before the Court *sua sponte* on its own motion and on plaintiff Korry Busch's motion for appointment of counsel. For the reasons that follow, I will direct Busch to take the requisite steps to effect service of process on the defendant. I will deny Busch's motion for appointment of counsel without prejudice.

Korry Busch, who proceeds in this matter pro se, filed his complaint in this action on December 19, 2023, without payment of the Court's filing fee or a motion to proceed without prepayment of fees and costs. After being directed to either pay the fee or file a motion, he paid the full filing fee on January 12, 2024. Because Busch paid the full filing fee, neither the Court nor the United States Marshal Service performs service of process. Instead, Busch is responsible for serving the defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure.

Listed below are two options for service of process. Busch must follow one of these two options:

Option I: Busch must serve the defendant with summons. To do so, Busch must submit to the Court: i) a file-stamped copy of his complaint; ii) a completed summons form (AO Form 440); and iii) a completed “Notice of Intent to Use Private Process Server” form. The “Notice of Intent to Use Private Process Server” form must include the name and address of the process server who will be effectuating service upon defendant. While Busch submitted a completed summons form with his complaint (ECF 1-4), the additional “Notice of Intent to Use Private Process Server” form is required for service. Busch must complete the form and return it to the Clerk’s Office. Once Busch submits the form, the Clerk’s Office will sign and seal the summons and return it to him. The summons and complaint must then be served upon the defendant by a private process server and return of service must be filed with the Court. Attached to this Order is the necessary “Notice of Intent to Use Private Process Server” form for service of the complaint by summons.

Or in the alternative,

Option II: Busch has the option of electing to serve defendant with the “Waiver of Service” form pursuant to Federal Rule of Civil Procedure 4(d). If Busch uses this option, he must complete a “Waiver of Service” form for the

defendant. Busch must then send the “Waiver of Service” form to the defendant, along with a copy of the complaint and a self-addressed and stamped envelope.¹ The Court will order the Clerk to forward the form to Busch with the copy of this Order. If defendant chooses not to waive service, Busch will then need to use a private process server as described above in Option I.

As to Busch’s motion for appointment of counsel, his request is premature. Defendant has not yet been served, and the Court has not issued any Case Management Order. Moreover, the factual nature of the case and the legal issues involved do not appear complex. Busch appears able to investigate his claims and has clearly presented them in his complaint. Because the appointment of counsel at this time would not be of sufficient benefit to the Court or to Busch, I will deny his motion for appointment of counsel without prejudice.


Accordingly,

IT IS HEREBY ORDERED that plaintiff Korry Busch shall cause service to be effected upon defendant **no later than ninety (90) days from the date of this Order**. In the absence of good cause shown, failure to timely serve the defendant may result in the dismissal of Busch’s claims against the defendant without prejudice.

¹If Busch chooses to serve defendant by waiver, he should file a notice with the Court informing the Court of his intention. Additionally, after the defendant signs one copy of the waiver and returns it to Busch, Busch should file his copy of the signed waiver with the Court.

IT IS FURTHER ORDERED that the Clerk of Court shall forward to plaintiff Busch with a copy of this Order: i) a file-stamped copy of the complaint; ii) a “Notice of Intent to Use Private Process Server” form; and iii) a “Waiver of Service” form.

IT IS FURTHER ORDERED that plaintiff Busch’s Motion for Appointment of Counsel [2] is **DENIED without prejudice**.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 31st day of January, 2024.